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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVION DOUGLAS,

Defendant and Appellant.

B281579

(Los Angeles County
Super. Ct. No. TA140158)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Kelvin D. Filer, Judge. Affirmed.

Jared G. Coleman, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Senior Assistant
Attorney General, Victoria B. Wilson and Idan Ivri, Deputy
Attorneys General, for Plaintiff and Respondent.

Appealing the judgment entered following his conviction for unlawful possession of ammunition, Davion Douglas argues there was insufficient evidence to support the jury's finding he had dominion over, or a right to control, the ammunition found in a bedside dresser in the home where he was staying. Douglas also asks this court to independently review the sealed affidavit that supported the warrant issued to search the house, which led to the discovery of the ammunition. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Information

Douglas was charged in an information with one count of unlawful possession of ammunition by a felon (Pen. Code, § 30305, subd. (a)).¹ It was specially alleged Douglas had previously suffered a prior serious or violent felony conviction within the meaning of the three strikes law (§§ 667, subds. (b)-(j), 1170.12) and had served three prior separate prison terms for felonies (§ 667.5, subd. (b)). Douglas pleaded not guilty and denied the special allegations.

2. The Motion To Suppress Evidence

Douglas moved to suppress the evidence (the ammunition) discovered during a search of his girlfriend's house, where he had spent the night before his arrest. The warrant authorizing the search of the house was supported by the affidavit of Los Angeles County Sheriff's Detective Joseph Sumner, a portion of which was sealed to protect the identity of a confidential police informant. The trial court conducted an in camera review of the sealed portions of the affidavit, ruled there were sufficient

¹ Statutory references are to this code unless otherwise stated.

grounds to maintain the confidentiality of the informant and denied the motion, finding probable cause supported issuance of the warrant.

3. Evidence at Trial

Detective Sumner testified that he and other law enforcement officers executed a search warrant at approximately 5:30 a.m. on May 13, 2016 at a house on Killen Court in Compton. Sumner knocked on the front door, announced he was from the Sheriff's Department and had a search warrant and directed that the door be opened. When there was no response, Sumner knocked again. After another minute, the law enforcement team began to force entry. At this point a voice from inside said, "We're opening the door."

When the door opened, the officers saw Douglas, his girlfriend, Marqueshia Thompson, and Thompson's uncle, Anthony Mosley. According to Detective Sumner, Mosley was standing immediately at the doorway. Thompson and Douglas appeared to have come from a hallway leading to a bedroom. Sumner told all three individuals to step outside the house, where they were detained in the driveway. There was no one else in the house.

The search warrant was given to Mosley, who indicated he was the owner of the house. Undertaking the search, Detective Sumner found a 20-round box of live AK-47 ammunition inside the bottom drawer of a dresser in Thompson's bedroom. The same dresser drawer also contained a plastic bag with other types of ammunition.² Both the box and the plastic

² The bag contained six .38-caliber handgun rounds, eight 30/30 rifle rounds and 13 shotgun shells.

bag were covered by women's and men's clothing. The dresser was within arm's reach of the bed, approximately two feet away.

Detective Sumner walked outside the house to speak to Thompson. As he did, he saw Douglas whispering in Thompson's ear. Sumner asked one of the assisting officers to put Douglas into the back of a police vehicle and directed Thompson to follow him inside the house, where he told her he had found ammunition in her bedroom, showed her the box of AK-47 bullets and asked her to whom it belonged. According to Sumner, Thompson appeared shocked by the question and seemed to try to look out the front door. She then said the ammunition belonged to her grandfather. Thompson explained her grandfather had been dead for several years, and her mother had told her to safeguard the ammunition in her bedroom after it was discovered the previous week. As Sumner and Thompson walked back outside, Douglas yelled from inside the police car that the ammunition in the bedroom belonged to Thompson's grandfather, not to him.

Testifying as a prosecution witness, Thompson said Douglas was her boyfriend and explained, although they did not live together, Douglas had spent the night with her at her grandmother's house so that she could drive him to work early the next morning. According to Thompson, Douglas had stayed overnight at her grandmother's house only seven or eight times in the year she had been living there and did not keep his clothing in the closet or the dresser in her bedroom.³

³ Thompson testified she was "kind of a tomboy" and wore T-shirts and basketball shorts that might be mistaken for men's clothing.

Thompson confirmed that, when Detective Sumner asked her about the bullets, she answered, “Those are my grandpa’s bullets.” Thompson explained that she had found the bullets while cleaning in the attic of her grandparents’ house about a week before the search. Her grandfather had collected guns. Following his death, one of her uncles had removed all the guns from the house. However, the ammunition was always stored separately from the guns. When Thompson found the box of ammunition in the attic, she called her mother, who asked her to keep it in her bedroom dresser until her uncle picked it up, so none of her young cousins, who often visited the house, would find it. Thompson told Sumner that Douglas did not know anything about the ammunition being in her room.

According to Thompson, Douglas did not have full access to the house when he stayed overnight. She also testified that a number of her other relatives occasionally stayed at the house, as well.

The People did not introduce any DNA testing or fingerprint evidence suggesting Douglas had ever handled the box of ammunition. No photographs were taken of the ammunition in the dresser drawer or the clothing found inside it.

Douglas did not testify or present any witnesses in his defense.

4. The Verdict and Sentencing

The jury found Douglas guilty of unlawful possession of ammunition. In a bifurcated bench trial Douglas admitted the prior serious felony and prior prison term special allegations.

The trial court dismissed the prior strike and two of the prior prison term enhancements and sentenced Douglas to three years in state prison: the middle term of two years for

unlawful possession of ammunition plus one year for the remaining prior prison term enhancement. The court also imposed statutory fines and fees.

DISCUSSION

1. *Standard of Review*

“To determine whether sufficient evidence supports a jury verdict, a reviewing court reviews the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable jury could find the defendant guilty beyond a reasonable doubt.” (*People v. Hardy* (2018) 5 Cal.5th 56, 89; accord, *People v. Mora and Rangel* (2018) 5 Cal.5th 442, 488 [“[a]lthough we assess whether the evidence is inherently credible and of solid value, we must also view the evidence in the light most favorable to the jury verdict and presume the existence of every fact that the jury could reasonably have deduced from that evidence”].)

“Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence.” (*People v. Brooks* (2017) 3 Cal.5th 1, 57.) “The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. [Citation.] Although it is the duty of the jury to acquit a defendant if it finds the circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court[,] which must be convinced of the defendant’s guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant

a reversal of the judgment.” (*People v. Ghobrial* (2018) 5 Cal.5th 250, 277-278, internal quotation marks omitted.)

2. *Governing Law*

Section 29800, subdivision (a)(1), prohibits any person who has been convicted of a felony under California law from owning or possessing any firearm. Section 30305, subdivision (a)(1), the statute Douglas was charged with violating, provides, “No person prohibited from owning or possessing a firearm [under specified provisions of the Penal and Welfare and Institutions Codes, including section 29800] shall own, possess, or have under custody or control, any ammunition or reloaded ammunition.”

The jury was instructed pursuant to CALCRIM No. 2591 that, to find Douglas guilty of unlawfully possessing ammunition, “the People must prove that: [¶] 1. The defendant possessed or had under his custody or control ammunition; [¶] 2. The defendant knew he possessed or had under his custody or control the ammunition; [¶] AND [¶] 3. The defendant had previously been convicted of a felony. [¶] . . . [¶] A person does not have to actually hold or touch something to possess it. It is enough if the person has control over it or the right to control it, either personally or through another person.” For purpose of the jury trial, Douglas and the People stipulated Douglas had previously been convicted of a felony.⁴

⁴ As discussed, after the jury returned its verdict of guilty for violating section 30305, subdivision (a), Douglas admitted at a bench trial that he previously had been convicted in 2012 of first degree burglary (§ 459), a serious felony; in 2011 of second degree burglary (§ 459); and in 2014 of grand theft (§ 487, subd. (a)).

As the jury was instructed, unlawful possession of a firearm or ammunition may be established by actual or constructive possession. (*People v. White* (2014) 223 Cal.App.4th 512, 524; see *People v. Spirlin* (2000) 81 Cal.App.4th 119, 130 “[p]ossession may be either actual or constructive as long as it is intentional”]; *People v. Mejia* (1999) 72 Cal.App.4th 1269, 1272 [defendant need not physically have the weapon on his person; constructive possession established where a person knowingly exercised dominion and control over an item].) Possession may be shared with others. (*People v. Rushing* (1989) 209 Cal.App.3d 618, 622.) Mere proximity to the weapon or ammunition, standing alone, is not sufficient evidence of possession (*People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1417, disapproved on another ground in *People v. Farwell* (2018) 5 Cal.5th 295, 304 & fn. 6; see *People v. Land* (1994) 30 Cal.App.4th 220, 223-224 [possession cannot be inferred from mere presence or access]), but “the necessary additional circumstances [to prove dominion and control] may, in some fact contexts, be rather slight.” (*Land*, at p. 225, quoting *People v. Zyduck* (1969) 270 Cal.App.2d 334, 336.)

3. *Substantial Evidence Supports Douglas’s Conviction for Unlawful Possession of Ammunition*

Douglas effectively concedes, as he must, there was substantial evidence he knew there was ammunition in Thompson’s house since he called out, apparently unprompted, that the ammunition found by Detective Sumner belonged to Thompson’s grandfather, not to him. He also had access to the ammunition because he had just spent the night with Thompson in her bedroom, where the ammunition was stored. He contends, however, there was no evidence he had any right to use or control

the ammunition found in the bedroom dresser, as required for a finding he had constructive possession of it.

Although there was no direct evidence of Douglas's right to control the ammunition, the People presented sufficient circumstantial evidence to permit the jury to reasonably infer it was in his constructive possession. (See *People v. Williams* (1971) 5 Cal.3d 211, 215 ["[t]he elements of unlawful possession may be established by circumstantial evidence and any reasonable inferences drawn from such evidence"]; *People v. White* (1969) 71 Cal.2d 80, 83 [same]; see also *People v. Singh* (2004) 119 Cal.App.4th 905, 911 [reasonable to infer appellant possessed firearm partially concealed by a pillow on the bed on which he was sitting at the time of arrest]; *People v. Land, supra*, 30 Cal.App.4th at p. 228 [reasonable inference passenger in stolen vehicle shared control with driver sufficient to support the conviction for receiving stolen property: "the question of possession turns on the unique factual circumstances of each case"]; *People v. Low* (1983) 148 Cal.App.3d 89, 92 [reasonable to infer driver of car had control of a loaded handgun located under driver's seat].)

First, there was men's clothing in the bedroom dresser drawer where the ammunition was found, reasonably supporting the inference that Douglas, Thompson's boyfriend, used the drawer to store his personal property.⁵ Second, according to

⁵ Thompson denied that Douglas kept any clothing in the dresser but did not suggest the men's items in the drawer belonged to anyone else. While Douglas is correct that disbelief of a witness's testimony does not create affirmative evidence to the contrary of the rejected statement (see, e.g., *People v. Loewen* (1983) 35 Cal.3d 117, 125; *Viner v. Sweet* (2004) 117 Cal.App.4th

Detective Sumner, Thompson appeared shocked when he showed her the ammunition and asked her whose it was, plainly implying Thompson was unaware there was ammunition in her bedroom and had not placed the ammunition in the dresser drawer herself, as she claimed. Third, Sumner observed Douglas whispering something to Thompson while the two were being detained in the front driveway. Shortly thereafter, in response to questioning by Sumner, Thompson explained the ammunition belonged to her deceased grandfather and insisted Douglas knew nothing about it; yet Douglas called out from the police car that the ammunition belonged to Thompson's grandfather. This sequence of events, and particularly the inconsistency between Thompson's effort to absolve Douglas of any knowledge of, or responsibility for, the ammunition and Douglas's attempt to defend himself by identifying Thompson's grandfather as the owner of the ammunition, reasonably suggests Douglas told Thompson to claim the ammunition was her grandfather's; but, as the Attorney General argues, the two did not have adequate time to coordinate their stories.

Although the evidence of Douglas's guilt is by no means overwhelming, these circumstances are adequate to support his conviction for unlawful possession of the ammunition. (See *People v. Cordova* (1979) 97 Cal.App.3d 665 [conviction for unlawful possession of a firearm supported by substantial evidence; rifle was found in the locked trunk of a car owned by defendant's father and driven by various family members;

1218, 1229-1230), Thompson's denial does nothing to lessen the persuasive force of the circumstantial evidence that Douglas kept personal items in the bedroom where he spent nights with Thompson.

evidence “tend[ed] to establish a chain of circumstances from which defendant’s knowledge and actual or constructive possession or control of the firearm could be readily inferred”]; *People v. Land, supra*, 30 Cal.App.4th at p. 228; see generally *People v. Ghobrial, supra*, 5 Cal.5th at p. 278 [“it is the jury, not the appellate court[,] which must be convinced of the defendant’s guilt beyond a reasonable doubt”; internal quotation marks omitted].)

People v. Sifuentes, supra, 195 Cal.App.4th 1410, relied upon by Douglas, does not require a different result. In that case the court of appeal held the evidence was insufficient to support Sifuentes’s conviction for unlawful possession of a firearm that had been discovered by police officers under the mattress of the bed near his codefendant while Sifuentes was lying on top of a second bed in the motel room. Sifuentes claimed he did not know there was a gun in the room. The only evidence advanced to prove Sifuentes had a joint right to control the firearm was a gang expert’s testimony that Sifuentes and the codefendant belonged to the same gang and a “gang gun” was accessible to gang members “at most times,” albeit with “certain restrictions.” (*Id.* at pp. 1417-1418.) However, Sifuentes and the codefendant were in the room with two women, and there was no evidence that they occupied the room for a gang-related purpose or that the firearm officers discovered in the room fell into the gang gun category. (*Id.* at p. 1417.) Nor did the expert testify all gang members had the right to control communal gang guns. (*Id.* at p. 1419.) Here, in contrast, it is undisputed Douglas knew about the ammunition, and circumstantial evidence reasonably supports the inference he not only had access to the dresser

drawer where it was found but also jointly controlled personal property stored there.

4. *The Trial Court Did Not Abuse Its Discretion by Declining To Unseal Portions of the Search Warrant Affidavit or Denying the Motion To Traverse and Quash the Search Warrant*

a. *Governing law*

Evidence Code section 1041 codifies the common law privilege against disclosure of the identity of a confidential informant. (See *People v. Galland* (2008) 45 Cal.4th 354, 363.) Evidence Code section 1042, subdivision (b), provides that disclosure of an informant's identity is not required to establish the legality of a search pursuant to a warrant or the admissibility of evidence obtained as a result of that search. A corollary rule provides, "[I]f disclosure of the contents of [the informant's] statement would tend to disclose the identity of the informer, the communication itself should come within the privilege." (*People v. Hobbs* (1994) 7 Cal.4th 948, 961-962 (*Hobbs*).) "These codified privileges and decisional rules together comprise an exception to the statutory requirement that the contents of a search warrant, including any supporting affidavits setting forth the facts establishing probable cause for the search, become a public record once the warrant is executed." (*Id.* at p. 962.) Instead, a court may seal those portions of the search warrant affidavit that relate information that, if disclosed in the public portion of the affidavit, would reveal or tend to reveal a confidential informant's identity. (*Galland*, at p. 364; *Hobbs*, at p. 963.)

When a defendant moves to quash or traverse a warrant where a portion of the supporting affidavit has been sealed,⁶ as here, the relevant materials are to be reviewed in camera by the trial court. (*Hobbs, supra*, 7 Cal.4th at p. 963; see Evid. Code, § 915, subd. (b).) The court first determines whether there are sufficient grounds for maintaining the confidentiality of the informant's identity. If so, the court then determines whether the sealing of the affidavit (or any portion of it) "is necessary to avoid revealing the informant's identity." (*Hobbs*, at p. 972.)

If the affidavit is found to have been properly sealed, the court then must decide, if the defendant has moved to quash the warrant, whether, under the totality of the circumstances presented in the search warrant affidavit and the oral testimony, if any, presented to the magistrate, there was "a fair probability" that contraband or evidence of a crime would be found in the place searched pursuant to the warrant. (*Illinois v. Gates* (1983) 462 U.S. 213, 238 [103 S.Ct. 2317, 76 L.Ed.2d 527]; see *People v. Galland, supra*, 45 Cal.4th at p. 364; *Hobbs, supra*, 7 Cal.4th at p. 975.) "The question facing a reviewing court asked to determine whether probable cause supported the issuance of the warrant is whether the magistrate had a substantial basis for concluding a fair probability existed that a search would uncover wrongdoing. [Citations.] 'The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him [or her],

⁶ A motion to traverse challenges the truth of the affidavit; a motion to quash challenges the sufficiency of the affidavit (that is, assuming the facts are true, do they rise to the level of probable cause). (See *People v. Galland, supra*, 45 Cal.4th at p. 364.)

including the “veracity” and “basis of knowledge” of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1040-1041.) The magistrate’s determination of probable cause is entitled to deferential review. (*Id.* at p. 1041; accord, *Gates*, at p. 236.)

If the defendant has moved to traverse the warrant, the issue is “whether the defendant’s general allegations of material misrepresentations or omissions are supported by the public and sealed portions of the search warrant affidavit.” (*Hobbs, supra*, 7 Cal.4th at p. 974.) “Generally, in order to prevail on such a challenge, the defendant must demonstrate that (1) the affidavit included a false statement made ‘knowingly and intentionally, or with reckless disregard for the truth,’ and (2) ‘the allegedly false statement is necessary to the finding of probable cause.’” (*Ibid.*)

b. *The necessity of sealing portions of the affidavit*

Douglas acknowledges the trial court held an in camera hearing in accordance with *Hobbs, supra*, 7 Cal.4th 948 and does not challenge on appeal the propriety of the trial court’s decision to maintain portions of the search warrant affidavit under seal to protect the identity and safety of the confidential informant.

c. *Probable cause to issue the search warrant*

We have reviewed the sealed and unsealed portions of Detective Sumner’s search warrant affidavit, as well as the in camera hearing transcript, which included testimony from Sumner. Our review confirms the affidavit provided a substantial basis for the magistrate’s probable cause determination—that is, that the information from the confidential informant was reliable and there was a fair probability that contraband or evidence of a crime would be found

in the places searched pursuant to the warrant. (See *Hobbs*, *supra*, 7 Cal.4th at p. 975.)

d. *Material misrepresentations*

Search warrant affidavits are presumed truthful. (*Hobbs*, *supra*, 7 Cal.4th at p. 966.) In his moving papers Douglas did not assert, even generally, that the affidavit supporting the search warrant included any material misrepresentations or omissions.⁷ Neither the trial court's examination nor our own review of the affidavit and the in camera testimony disclosed anything that suggests the affidavit included any false statements, let alone a false statement made knowingly and intentionally or with reckless disregard for the truth. The motion to traverse the search warrant was properly denied. (See *Hobbs*, at p. 974 [if the defendant's claims of material misrepresentation are not supported, "the court should simply report this conclusion to the defendant and enter an order denying the motion to traverse"].)

⁷ When "all or a major portion of the search warrant affidavit has been sealed in order to preserve the confidentiality of the informant's identity, a defendant cannot reasonably be expected to make even the 'preliminary showing' required for an in camera hearing under [*People v.*] *Luttenberger* [(1990) 50 Cal.3d 1]." (*Hobbs*, *supra*, 7 Cal.4th at p. 972, fn. 6, italics omitted.) "[W]here the defendant has made a motion to traverse the warrant under such circumstances, the court should treat the matter as if the defendant has made the requisite preliminary showing" (*ibid.*) and "take it upon itself . . . to examine the affidavit for possible inconsistencies or insufficiencies." (*Id.* at p. 973.)

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.